

TENTATIVE RULINGS for CIVIL LAW and MOTION

March 24, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Coast Transit Refrigeration, Inc. v. Property Equities, LLC**
Case No. CV CV 09-1563, consolidated with
Property Equities, LLC v. Coast Transit Refrigeration, Inc.
Case No. CV UD 09-2757

Hearing Date: **March 24, 2010** **Department Fifteen** **9:00 a.m.**

Property Equities, LLC's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (h).)

Property Equities, LLC's demurrer based on the contention that Coast Transit Refrigeration, Inc. is not a real party in interest is **OVERRULED**. (*02 Development, LLC v. 607 South Park, LLC* (2008) 159 Cal.App.4th 609, 612.) The first amended complaint alleges facts which show that the lease and purchase agreements were not assigned because the contracting parties contemplated that Coast Transit Refrigeration, Inc. would be the original lessee. (First amended complaint ¶¶ 9, 16, and 17.)

Property Equities, LLC's demurrer based on uncertainty is **OVERRULED**. It has not been established that Paragraph 26 of the purchase agreement is a material term of the lease or purchase agreement. Additionally, the plaintiff does not seek to enforce the contract provisions that are allegedly uncertain. Paragraph 1.1 of the purchase agreement states that escrow will close "60 days after Buyer exercises Option to Purchase." Paragraph 26(1) of the purchase agreement provides for an earlier escrow closing date *at the buyer's option*. The first amended complaint does not allege that an earlier escrow closing date was requested. Paragraph 26(2) of the purchase agreement provides that the seller shall subordinate its loan to a tenant-improvement loan of no more than \$75,000, *if requested*. The first amended complaint does not allege that the buyer asked the seller to subordinate its loan to a tenant-improvement loan.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

CASE: Egan v. Diaz
Case No. CV CV 09-2279

Hearing Date: March 24, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiffs' motion for attorney's fees is **DENIED**. Entitlement to fees under Code of Civil Procedure section 473, subdivision (b) is limited to cases where relief is granted based on an attorney's affidavit of fault. The Court did not grant the defendants relief based on an attorney's affidavit of fault. Relief was granted based on the discretionary provision of section 473, subdivision (b).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Page v. Regents of the University of California, et al.
Case No. CV PM 08-228

Hearing Date: March 24, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiffs' Motion for Summary Adjudication re: Textron Inc., dba E-Z-GO:

Plaintiffs Robert S. Page's and Yen Young Page's motion for summary adjudication as to Textron, Inc. dba E-Z-Go ("E-Z-GO") is **DENIED**. (Code Civ. Proc., § 437c; *Beninati v. Black Rock City, LLC* (2009) 175 Cal.App.4th 650, 656.) Defendant's Reply to Plaintiffs' Undisputed Material Facts 1-6, Exhibit A, 40:24-42:12,44:1-6, 45:23-47:9, 51:8-52:3, Exhibits D-I, K; Exhibit 3; Dec. of Doyle.) Defendant raises triable issues of material fact concerning the element of causation as to the stated causes of action and its affirmative defenses. Plaintiffs argue in their motion that the elements of causation and damages will require expert testimony and that the expert disclosures will be served on March 22, 2010. Further Plaintiff Robert Page testified that he has no independent memory or recollection of warnings on the vehicle. Therefore, Plaintiffs cannot establish the causal connection between the representations or omissions that accompanied the subject vehicle and Robert Page's injuries.

Plaintiffs' objections to E-Z-Go's Exhibit M – Deposition of Wally Powell, Exhibit N, Deposition of Alan Dorris, and Paragraphs 8 & 9 of the Declaration of Sandra Metzler, D.Sc., P.E., are **SUSTAINED**. All other objections are **OVERRULED**.

E-Z-GO's objections numbers 1-5 and 13-14, are **SUSTAINED**. All other objections are **OVERRULED**.

Plaintiffs' Motion for Summary Adjudication re: Regents:

Plaintiffs' motion for summary adjudication as to Defendant Regents of the University of California ("Regents") is **DENIED**. Regents was not statutorily required to provide seatbelts for the subject vehicle. (Veh. Code, §§ 385.5 & 27315.) Additionally, Defendant provided

specific facts showing that a triable issue of fact exists concerning each of its affirmative defenses. (Defendant's Undisputed Material Facts 1-29.)

Plaintiffs' request for judicial notice of Defendant Regents of the Vehicle Code, the University of California Davis Campus Policy and Procedure Manual, Chapter 350, Supplies and Equipment, Section 35, Miscellaneous Vehicles, and University of California Davis Campus Traffic and Parking Code, are **GRANTED**. (Evid. Code, §§ 451, 452, and 453.)

Plaintiffs' objection to Defendant's Exhibit A is **OVERRULED**. Plaintiffs' objection to the Declaration of Glen J. Pettibone is **OVERRULED**.

Regents of the University of California's objections to Plaintiffs' Exhibit numbers 12, 13 and 18 are **SUSTAINED**. All other objections are **OVERRULED**.

Plaintiffs' Motions for Sanctions:

Plaintiffs' motions for sanctions against Regents and E-Z-Go are **DENIED**. (Code Civ. Proc., § 128.7.)

E-Z-GO's Motion for Summary Judgment/Adjudication:

Textron, Inc. dba E-Z-GO's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c; Defendant's Undisputed Material Facts (UMF) 5-7, 16, 21-22, 25-26, 29-32, 42-43; Plaintiffs' Additional Undisputed Material Facts (PUMF) 1-23.)

Textron, Inc.'s motion for summary adjudication of the causes of action for failure to warn and the punitive damages claim are **GRANTED**. (Code Civ. Proc., § 437c; Civ. Code, § 3294; *Gombos v. Ashe* (1958) 158 Cal.App.2d 517, 526-527.) There were warnings placed on the vehicle. (UMF 29.) Plaintiff Robert Page has no independent memory or recollection of warnings on the vehicle. (UMF 28.) Therefore, he cannot establish the causal connection between the representations or omissions that accompanied the subject vehicle and his injury. Plaintiff fails to establish by clear and convincing evidence that Defendant was guilty of oppression, fraud, or malice as those terms are defined in Civil Code section 3294. (UMF 47, PUMF 1-23.)

Textron, Inc.'s motion for summary adjudication as to all other causes of action is **DENIED**. (Code Civ. Proc., § 437c; UMF 5-7, 16, 21-22, 25-26, 29-32, 42-43; PUMF 1-23.)

Defendants' objections to plaintiffs' evidence numbers 1-5 are **SUSTAINED**.

If no hearing is requested, plaintiffs are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Pisani v. Barbosa**
Case No. CV CV 09-1569

Hearing Date: **March 24, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's evidentiary objection to the defendants' supporting declarations based on improper jurat is **SUSTAINED**. (Code Civ. Proc., § 2015.5.) It is not necessary for the Court to rule on the other evidentiary objections to these declarations.

Defendant's motions to set aside the entry of default and default judgment are **DENIED**. (Code Civ. Proc., § 473, subd. (b).) The declarations filed in support of the defendants' motions do not contain a valid jurat. Even if the Court could consider such declarations, the declarations do not support granting relief.

Neither defendant denies receiving the summons and complaint. Defendants do not explain why they could not have read the summons or that they did not understand what is stated on the summons. If defendants read the summons they would have known that their answer to the complaint was due before the October 22, 2009, case management conference. The summons states, "You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court". "If you do not file your response on time, you may lose the case by default". If Defendants did not read the summons, they did so at their own peril. (*Garner v. Erlanger* (1890) 86 Cal. 60; *Davis v. Thayer* (1980) 113 Cal.App.3d 892; *Goodson v. Bogerts, Inc.* (1967) 252 Cal.App.2d 32.)

Defendants do not deny receiving a copy of the plaintiff's Requests for Entry of Default, which were served on Juan Daniel Barbosa on July 30, 2009, and on Juan Barbosa Senior on August 14, 2009. There is no evidence that the defendants did anything in response to these Requests. Defendants also do not explain the reason for the nearly 3-month delay in filing the motions at bar after the defendants received notice of the default judgment.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.